



Attorney Docket No. CALW-004/01US

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: David W. JOHNSON, et al.

Confirmation No.: 1511

Serial No.: 10/698,424

Group Art Unit: 1638

Filed: November 3, 2003

Examiner: Keith O'Neal Robinson

For: ALFALFA PLANTS HAVING IMPROVED STANDABILITY AND/OR FAST
RECOVERY AFTER HARVEST AND METHODS FOR PRODUCING SAME

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DECLARATION UNDER 37 C.F.R. § 1.132

I, David W. JOHNSON, Ph.D., declare as follows:

1. Cal/West Seeds ("Cal/West") is the assignor of the above-referenced U.S. Patent Application ("the '424 application"). I am the Assistant Director of Research for Cal/West.

2. I am a named co-inventor of the '424 application. I am familiar with the specification, the pending claims and the prosecution file history of the '424 application.

3. I have read and understand the Non-Final Office Action dated May 6, 2010. Claims 2-4, 6-19, 30 and 31 stand rejected under 35 U.S.C. 102(b) as allegedly anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Cluff et al. (U.S. Patent No. 6,143,951). More specifically, the Office Action alleges that "Cluff et al. teach a *Medicago sativa* alfalfa line, WL-C290, that has very fast recovery after harvest and excellent standability under sprinkler irrigation."

4. Cal/West seeded an alfalfa standability trial on June 17, 2010, in West Salem, Wisconsin, at a seeding rate of 4 grams/seed per 15 foot row plot. The following 12 alfalfa varieties were included in the trial: (1) the variety taught by Cluff *et al.* (*i.e.*, 'WL-C290'); (2) four exemplary varieties developed according to the invention and disclosed in the '424 application (*i.e.*, 'CW 75046', 'CW 83021', 'CW 85029', 'CW 95026'); (3) the four check varieties listed in pending claim 15 (*i.e.*, 'WinterGold', 'HybriForce 400', 'WL 319HQ', 'WL 325HQ'); (4) two additional alfalfa varieties developed according to the invention as disclosed in the '424 application (*i.e.*, 'CW 075028' and 'CW 14032'); and, (5) a commercially available variety sold by a competitor (*i.e.*, '54H11'), which was publicly released after the priority filing date of the '424 application. The West Salem, WI area had seasonal temperatures and above-average rainfall from June-September 2010.

5. The standability of all varieties was measured on August 5, 2010 (*i.e.*, 49 days after seeding), and on September 24, 2010 (*i.e.*, 50 days after the August 5th harvest), according to the procedure set forth in the specification and as set forth in claim 15, step b). The results of the alfalfa standability trail are provided in the attached Table 1.

6. As shown in Table 1, 'CW 075028', 'CW 14032', 'CW 75046', 'CW 83021', 'CW 85029' and 'CW 95026' each had 275% or greater more average erect stems (standability) when compared to each of the commercial check varieties 'WinterGold', 'HybriForce 400', 'WL 319HQ', and 'WL 325HQ.' In contrast, 'WL-C290' had only 12.5% erect stems when compared to the same commercial check varieties.

7. I further declare that all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-referenced application or any patent issuing thereon.

Respectfully submitted,

Date: October 6, 2010

By: David W. Johnson

David W. JOHNSON



Table 1. Results of the 2010 alfalfa standability trial in Salem, WI.

Entry	Standability			% Greater Erect Stems Compared to Checks
	8-5-10	9-24-10	2010 Average	
54H11	8.00	7.75	7.875	687.5%
WL-C290	1.00	1.25	1.125	12.5%
CW 075028	9.00	9.00	9.0	800.0%
CW 14032	8.50	7.50	8.0	700.0%
CW 75046	6.00	5.25	5.625	462.5%
CW 83021	4.00	4.25	4.125	312.5%
CW 85029	4.00	3.50	3.75	275.0%
CW 95026	6.50	6.00	6.25	525%
HybriForce 400	1.00	1.00	1.00	Check
WinterGold	1.00	1.00	1.00	Check
WL 319 HQ	1.00	1.00	1.00	Check
WL 325 HQ	1.00	1.00	1.00	Check
Grand Mean	4.25	4.04	4.15	
LSD (0.05)	1.07	0.58	0.54	
C.V. (%)	17.85	10.18	9.29	
R2	0.96	0.99	0.99	